IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

M P No. 1063 /1990

1. Maniram Yadav
son of Shri Kanj Bahalram Yadav
aged about 31 years
Naya Tikra Para
Khairagarh
(Distt. Rajnandgaon)MP

2. Ramdas Verma son of Shri Milandas Verma
aged about 30 years
C/s Shri Ramdhyan Singh
near water works
Ward No. 3
Khairagarh(Distt. Rajnandgaon)MP

3. Ramdhyan Singh
son of Shri Mathura Singh
aged about 30 years
Near waterworks
Ward No. 3
Post Khairagarh
(Distt. Rajnandgaon)MP.....Petitioners

Versus

1. Vice Chancellor
Indira Kala Sangit Vishwavidyalaya,
Khairagarh(MP)

2. Registrar
Indira Kala Sangit Vishwavidyalaya
Khairagarh(MP) .....
Respondents

PETITION UNDER ARTICLES 226 and 227 OF THE CONSTITUTION OF INDIA

The petitioners beg to submit as under :-

1. That the petitioners are citizens of India.

/2/

AFR

16.1.06

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.1063 OF 1990

Petitioners	:	Maniram Yadav and others
	versus	
Respondents	:	Vice Chancellor, Indira Kala Sangit Vishwavidyalaya, Khairagarh and another

---

Present : Mr. Satyendra Sahu, counsel for the petitioners.
Mr. S.L.Bajaj, counsel for the respondents.

ORDER
(Passed on 16th of November, 2006)

Petitioner No.1 was appointed as Lower Division Clerk on ad hoc basis at Collector's rate for a period of two months on payment of Rs.450/- per month with effect from 9-10-1985 (Annexure W-1). Thereafter, the period of appointment was extended on the same terms and conditions. Petitioner No.1 was further appointed by order dated 26-4-1986 (Annexure W-3) on the same terms and conditions and he continued on the basis of several orders appointing him on ad hoc basis till 31-8-1989 (Annexures W-1 to W-18).

2. Petitioner No.2 was appointed temporarily on the post of Clerk for 89 days at Collector's rate on payment of Rs.540/- per month with effect from 1-11-1987 (Annexure X-1). Thereafter, petitioner No.2

141

continued on the basis of several orders appointing him on ad hoc basis on the same terms and conditions till 31-8-1989 (Annexures X-1 to X-9).

3. Petitioner No.3 was appointed temporarily at Collector's rate on 11-8-1988 (Annexure Y-1) and by virtue of several orders passed for temporary appointment at Collector's rate for a limited period, he continued upto 31-8-1989 (Annexures Y-1 to Y-7).

4. The services of the petitioners came to an end on completion of the period of appointment, which was based purely on temporary basis for 89 days, on 31-8-1989, by order dated 30-8-1989 (Annexure-B).

5. It is admitted case of the petitioners that the appointment of the petitioners was not in accordance with the constitutional scheme of employment or under any rules framed under proviso to Article 309 of the Constitution of India inviting applications from all the eligible candidates. In the present case, the petitioners seek quashing of the impugned order dated 30-8-1989 (Annexure-B) and a writ/direction to the respondents to take back the petitioners in service with effect from 1-9-1989 with all back wages.

6. The Supreme Court, while dealing with the matters of daily wagers, *ad hoc* employees, probationers, temporary or contractual employees, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution of India, held that such

(142)

appointments dehors the constitutional scheme amounts to back door entry in the matter of public employment.

7. The Constitutional Bench of the Supreme Court in *Secretary, State of Karnataka and others vs. Umadevi (3) and others*[1] has laid down clear enunciation of law which was followed later on in various decisions by the Supreme Court. Some are *Accounts Officer (A&I) A.P.SRTC and others vs. P. Chandra Sekhara Rao and others*[2], *Surinder Prasad Tiwari vs. U.P. Rajya Krishi Utpadan Mandi Parishad and others*[3], *Nagar Mahapalika (now Municipal Corpn.) vs. State of U.P. and others*[4] and *U.P. State Road Transport Corporation vs. Man Singh*[5].

8. In the case of *Secretary, State of Karnataka and others vs. Umadevi (3) and others* (Supra), the Supreme Court observed as under :-

> "45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain – not at arm's length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing

143

so, it will be creating another mode of public appointment which is not permissible."

"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission."

9. For the reasons above-stated and as per the dicta laid down by the Supreme Court, the petitioners are not entitled to absorption/permanent status or regularisation in the service.

10. This petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

---

1 (2006) 4 SCC 1
2 (2006) 7 SCC 488
3 (2006) 7 SCC 684
4 2006 AIR SCW 2497
5 2006 AIR SCW 5159

Gopal